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PREFACE

This manual provides general information and guidelines concerning the legal basis and authority, administrative structure, and management procedures and practices for mandatory-membership property owners and condominium unit owners associations. Information is included about specific federal and state laws and County ordinances that affect the activities and services available to and through these *residential community* associations. This manual also contains general information and procedures on fundamental needs and issues common to many voluntary membership civic associations in our residential communities. While the manual may not address special needs or a situation particular to mandatory or voluntary membership associations, it includes many organization references and lists publications that are resources for more detailed information. This should encourage further research to help the association officers function effectively.

This manual is an operational guideline only, and is not intended to give legal, accounting, management or other professional advice. Although care has been taken to ensure that information in this manual is accurate and up-to-date, it relies upon federal, state and local laws, and resources that are subject to periodic change and amendment. All readers should be aware of such possible changes, and should verify the application of laws, regulations and other information with a responsible agency before acting or relying upon them. Professionals should be consulted when deemed necessary.

This manual is organized in four Sections.

Section I: Association Organization, discusses the governing documents and statutes that form the legal basis of a community association; its administrative organization, procedures and authorities; management types and arrangements; and many topics and issues that are common to most community associations.

Section II: Operations and Finance, discusses financial management and operations, budget preparation, taxes, legal requirements, and common expenses of property owners' associations.

Section III: Appendix and Bibliography, lists references used in this manual, other published information resources, as well as sources of technical assistance on topics common to most community associations.

Section IV: Laws and Ordinances, includes County ordinances that support, apply to, and are enforceable within all community associations.

INTRODUCTION

During the last half-century, new concepts of planned residential communities have evolved and flourished. One of these new concepts is that of self-governing, mandatory membership owners associations in which open spaces, privately owned streets, parking, recreation and other facilities are maintained and governed by the association of homeowners. The association's authority extends onto each privately owned lot and residence with regard to its external use, appearance, maintenance and repairs. The association has authority to adopt and enforce rules and regulations that govern some aspects of everyday living and routines. It charges annual assessments on all lots to pay for maintenance of the common grounds and operation of the association; and it holds the members individually accountable for violations of its rules and covenants. Each property or lot and its residence, or condominium residential unit is viewed as an integral, contributing part of the community. In return, the association maintains and protects the community standards and its inherent residential values.

Fairfax County has nearly 1,800 property owners/homeowners and condominium unit owners' associations that vary substantially in size, type of living unit, composition of the common areas and facilities, and scope of responsibilities. The situations encountered by these community associations vary widely according to:

- 1) the structure and requirements of the governing documents;
- 2) the organizational assistance and resources provided by the developer during transition to the owners;
- 3) the experience of the association's board members;
- 4) the type and quality of management used by the association; and
- 5) the cooperation and involvement of association members.

In some associations, responsibilities are limited simply to the collection of the annual assessments, maintenance of financial and meeting records, and enforcement of the covenants. Other responsibilities can include the use and maintenance of open areas and spaces, repair or replacement of recreation facilities, private streets and parking lots, facilities and other amenities in the development, and contracting for services and management. Condominium associations may also provide for exterior building maintenance, master-metered utilities, common heating systems, laundry and storage facilities, and other needs of the owners.

Although this manual will focus upon the mandatory-membership homeowners and condominium associations in Fairfax County, it is prudent to briefly recognize and clarify other types of residential community associations that exist here but in significantly smaller numbers. Community owners associations are the predecessors of contemporary homeowner associations and exist mostly in the first-developed, eastern parts of Fairfax County. Their original recorded covenants regarding such issues as building types and heights, minimum setback distance, fence height and types, sheds and out-buildings, uses and prohibitions on the subdivided lots, etc. are largely duplicated by today's zoning ordinance. Typically, however, these original covenants do not address exterior use, appearance and maintenance of the privately owned lots and houses as do contemporary covenants. Most importantly, many such predecessor community associations have a declaration recorded prior to January 1, 1959 and cannot be "grandfathered" under the Virginia Property Owners Association Act. Consequently, these associations lack authority to enforce and/or resolve violations of their covenants, rules, regulations, and policies.

Enforcement of these documents must be via litigation in court. These associations do not have the authority to charge financial assessments, therefore, they typically do not have the resources to pursue this course of legal action. However, due to the similarity of their covenants to the County-enforced zoning ordinance, some predecessor associations have amended their covenants out of existence and rely upon the County to enforce the zoning ordinance to achieve the same affect.

Cooperatives, time-shares, manufactured (mobile) home parks, and recreational clubs are other forms of land ownership or occupation regimes for members' residential and/or recreational use. These are typified by the organization's private ownership of all grounds, facilities, living units, and rights and privileges of use. Purchase of a membership in the organization entitles the member to the residential and/or recreational use specified in the documents. Each type of association or membership is governed by a different state statute that provides, among other things, for the collection of an annual membership fee or assessment for the maintenance, management, and administration of the grounds and facilities. These associations are usually required to hold an annual membership meeting to elect directors and to conduct the association's business.

While similar to residential community associations in purpose, organization and function, these land use associations don't have the same authorities and are in relatively minor numbers to homeowners' and condominium unit owners' associations, thus they don't warrant inclusion herein. However, the directors, officers and members of these or similar associations might find parts of this manual instructive and advantageous to their own operations. It is imperative, however, that the correct and applicable statute is obtained and that the requirements thereof are correctly understood and applied. Requirements of the Virginia Property Owners Association Act or the Virginia Condominium Act herein stated do not in any way apply to other types of land ownership or occupation for residential and/or recreational use.

Civic associations are voluntary membership community organizations whose purpose and agenda are more generally focused upon economic, social, cultural, political, educational, and/or development issues in the County or within the broad community. Civic associations are very beneficial in providing a discussion forum as well as a focused and unified voice of its members concerning community issues, proposals and positions, and in soliciting attention and assistance from elected officials or a governmental agency. Civic associations are neither mandated by local ordinance nor supported by state statutes, and thus have no authority with respect to the members or their geographical location, adherence to their goals and positions, or financial contributions and support from area residents. It is not uncommon for a civic association and one or more mandatory membership homeowner or condominium associations to exist in the same community with different authorities and purposes. However, civic associations are entirely voluntary in every aspect of their existence, operations and activities, and homeowners within the civic association community are individually free to participate or to not participate.

SECTION I: ASSOCIATION ORGANIZATION

Chapter 1 - GOVERNING DOCUMENTS

This chapter discusses the laws and recorded documents that govern mandatory membership residential owners associations. These laws are: 1) the Virginia Property Owners' Association Act; 2) the Virginia Condominium Act; 3) the Virginia Nonstock Corporation Act; and 4) the Fairfax County Code, Zoning Ordinance that requires developers to establish these associations. This chapter also describes the Declaration of Covenants, Conditions and Restrictions, Master Deeds, the Articles of Incorporation, and the Bylaws, - collectively referred to as the "governing documents".

The Fairfax County Zoning and Subdivision Ordinance, (Sections 2-701 through 2-705 of Chapter 112 of the County Code) requires common open spaces to be created and preserved in planned residential communities, and that these open spaces (and any facilities thereon) must be owned, maintained and managed by a nonprofit association of the homeowners. The management and use of these "common grounds" or "common elements" are specified in the association's "governing documents." Additionally, the Declaration of Covenants, Conditions and Restrictions (CCRs) imposes architectural guidelines and use limitations on the exterior of the privately owned properties or residential units within the development. These controls provide uniform standards for the community and some protection of the property values. To this end, state laws and the governing documents jointly empower the association to adopt and enforce rules and regulations as the association deems pertinent to resolve problems and govern the everyday routines and activities within the community. This combination of laws, governing documents, and adopted policies and regulations makes each and every association a distinctly separate and unique entity.

The primary difference between a homeowner (or property owners) association and a condominium association is in the ownership of the common grounds and the common elements. In a homeowners association, the common grounds and facilities (if any) are owned in fee simple by the association; all members have a right to use and an obligation to fund the maintenance of the common grounds. In a condominium, each individual unit also owns an undivided interest or part of all common grounds, streets and parking, recreation facilities, utilities, and parts of the residential structure (i.e., the roof and lobby), which are collectively known as the "common elements." The unit owners association owns no part of the common elements. However, in both types of property ownership, the association is legally responsible to maintain, repair, replace, and manage the common grounds/elements, and has the authority to adopt and enforce rules and regulations for the members' use of the common grounds/elements. These differences are substantial enough to require separate statutes in the Code of Virginia. It is important to note that Fairfax County has no authority to enforce association covenants, bylaws, rules and regulations, or to become involved in an association's business, membership, or other internal matters. This is the purview of the association's self-governance through its internal due-process procedure, alternative dispute resolution methods, or civil action in court, which may be initiated either by the association or by the member(s).

Association membership, rights and obligations are mandatory and automatic with the purchase of a property or residential unit subject to a declaration or master deed. This mandate for association membership “runs with the land” and automatically transfers to each new owner every time the property or unit is sold. This mandatory membership cannot be waived or voided by an owner, and is enforceable by law. This also assures each member’s right to use the common facilities and grounds, and imposes upon each member an obligation to share in the common expense and responsibilities of governance. The association has the lawful authority to annually assess and collect fees for maintenance of the community and operation of the association; to enforce the covenants, conditions, and restrictions; and, if necessary, to levy monetary penalties or assessments for violations thereof.

Property Owners’ (Homeowners) Associations:

In a property owners (homeowners) association, the land is subdivided into residential lots and common grounds. Each lot is privately owned, taxed, and assessed association dues whereas the common grounds and facilities are owned in the name of the association. The association is legally established and defined when the Declaration of Covenants, Conditions and Restrictions, an approved subdivision site plan, the Deed of Dedication, and (occasionally) the Bylaws are recorded in the County Land Records Office. The Deed of Dedication may contain restrictive or permissive easements, covenants or other regulations that apply to and govern the use of all lots included in the association. Prior to recordation, the County reviews these documents for their form, content, and compliance with law, including the County Code and the Virginia Property Owners Association Act.

Recordation of these approved documents legally defines and establishes the entity of the association, and the mandate for association membership. At this moment of the association’s “birth,” the developer/declarant is the only member and, thus, possesses full voting control of the association until the first property is sold. Thereafter, the owner membership and owner control grows with the purchase of each lot or unit. Usually, the governing documents establish different classes of membership such that the developer has 2 or 3 votes per unsold lot or unit whereas the new owners have 1 or 2 votes per lot. This assures that the developer maintains voting control of the association until sales reach about 70% - 75% of the lots and the new owners are sufficient in number and knowledge to assume control of the association and its operations. Eventually, all of the properties or units in the association, together with the voting rights, are sold and the control and operation of the association is taken over by the owners. The developer is still available on site for several months, a year, or longer as the construction is completed and reviewed by County officials prior to the release of the developer’s bond.

Virginia Property Owners’ Association Act - The Virginia Property Owners’ Association Act, Section 55-508 et seq. of the Code of Virginia, (the “Act”) enables, provides and clarifies the authority granted to a homeowner association and its board of directors, and establishes many of the association’s rights and responsibilities. However, considerable diversity of opinion and interpretation continues among some associations and the legal

profession concerning applicability of the Act to some associations. As currently written, the Act states that it applies to all developments subject to a declaration:

- initially recorded in County land records after January 1, 1959,
- incorporated or otherwise organized after such date; and,
- all such subdivisions created under the former Subdivided Land Sales Act (Virginia Code, Section 55-336).

The Act defines “development” to mean real property that is subject to a declaration that mandates membership and obligates each member to pay an annual assessment or authorizes the association to impose such assessment for maintenance of the common areas. If, however, a declaration was recorded between January 1, 1959 and July 1, 1991 and it did not provide authority for an assessment to maintain the common area(s), the association was excluded from application of the Act. In 1991, the General Assembly enacted amendments to correct this unintended exclusion, but the applicability debate continues. Long-standing associations whose declarations failed to address such annual assessment authority, or provided for assessments in amounts less than the \$150 per year/per lot as required in the Code, were left in doubt as to the applicability of the Act and their authority. In 1997, the (then) Attorney General of the Commonwealth concluded a review of this matter with the following statement:

“Accordingly, it is my opinion that the Act applies (i) to every mandatory membership homeowners’ association upon which maintenance or operational responsibilities are required or which possesses the authority to impose a regular annual assessment in any amount per lot, pursuant to a declaration recorded before July 1, 1991, and (ii) to every mandatory membership homeowners’ association upon which maintenance or operational responsibilities are required in an amount exceeding \$150 per year per lot, pursuant to a declaration recorded after July 1, 1991” (underlining added).¹

This opinion was intended to clarify the issues and remove the previous conflict. In 2003, the General Assembly amended the Act to remove the \$150 threshold for determining whether an association is subject to the Property Owners' Association Act. Consequently, the sole criteria for defining a mandatory-membership homeowners association is a declaration recorded on or after January 1, 1959 that gives the association the authority to impose any annual assessment per lot for maintenance of the common grounds or operational responsibilities. If any uncertainty persists, a board of directors should seek legal counsel, and possibly a second opinion. This Act specifically excludes its application to real estate time-shares, condominiums, cooperatives, membership campgrounds, or any nonstock, nonprofit, taxable corporation having non-mandatory members and, as its primary function, makes available golf, ski and other recreational facilities to both its members and the general public.

Inclusions and Provisions – For those associations to which the Property Owners’ Association Act is clearly applicable, the Act includes, requires, or provides for the following:

¹ Letter to The Honorable Linda T. Puller, Member, House of Delegates from Richard Cullen, Attorney General, Commonwealth of Virginia; Richmond, Virginia, dated November 7, 1997.

- associations must conduct open meetings, keep detailed books and records, and with very few exceptions, make them available to members;
- enforcement of the Declaration of Covenants, Conditions and Restrictions via due process procedure (see Chapter 3), and the levy of financial penalties (if necessary) against the property for violations;
- associations are given authority to levy special assessments when necessary or in appropriate circumstances;
- authority to create liens and other enforcement remedies is clarified;
- in a suit to enforce provisions of the declaration, the prevailing party may collect reasonable attorney fees.

Disclosure packet – Because of the special scheme of property ownership and authority found in homeowner associations, prospective purchasers need to know the various rights, responsibilities and authorities of the association and its members before they buy. They also need to know that the property is in good standing with the association in regard to its assessment account and its compliance with the covenants, conditions and restrictions of the governing documents. To accomplish this, the Property Owners Association Act requires the seller to provide an association-prepared package to the purchaser that discloses that the lot is located in a property owners' association subject to all provisions and requirements of the Act. This disclosure packet must contain:

- the name of the association, the state in which incorporated, and the name and address of its registered agent in Virginia;
- a statement of any board-approved expenditure which requires an assessment in addition to the regular assessment in the current or immediately next fiscal year;
- an account statement, including the balance of all assessments or other mandatory fees or charges pertaining to the specific lot for sale, the status of the account, and a statement as to the owner's right of use of the common areas;
- a statement identifying any other entity or facility to which the lot owner/seller may be liable for fees or other charges;
- a copy or summary of the current reserve study report, a statement of the status and amount of any reserve or replacement fund, and any portion of the fund allocated by the board of directors for a specified project;
- a copy or summary of the association's current budget, its income and expense statement, or statement of the association's most recent financial condition;

- a statement or status of any pending suit or judgment to which the association is a party which could have a material impact on the association, its members, or the lot being purchased;
- a statement setting forth all insurance coverage, including any fidelity bond of the association; and additional insurance normally secured by each lot owner;
- a statement that any improvement or alteration on the lot, or uses made of the lot or common area assigned thereto are not in violation of the governing documents, rules, or regulations;
- a statement setting forth any restriction, limitation or prohibition to place a sign on the lot advertising the lot for sale;
- a statement setting forth any restriction or prohibition on the owner's right to display any flag on the lot, including reasonable restrictions on the size, place and manner of display, and on the installation of any flagpole or structure needed;
- a copy of the current declaration, the Articles of Incorporation, the bylaws, all rules and regulations, and architectural guidelines adopted by the association and enforceable upon all common grounds and privately owned lots in the association;
- a copy of any notice given to the owner/seller by the association of any current or pending rule or architectural violation;
- a copy of the fully completed one-page cover sheet developed by the Real Estate Board; and
- a certification with filing number and date of expiry that the association has filed the annual report required by 55-516.1 with the Real Estate Board.

The association may impose and collect a charge reflecting the actual cost of the preparation of the disclosure packet, but shall not exceed ten cents per page for copying costs, and the total cost may not exceed \$100. The association is legally bound by its statements in the packet regarding 1) status of the assessment account and, 2) violations of architectural guidelines on the property. If the association fails to provide the packet on time, it will likely be unable to collect delinquent assessments attributable to the seller. The purchaser cannot be held accountable for actions and violations of the former owner. If the seller is financially harmed due to the association's failure to provide the packet on time, the association may also be liable for damages of up to \$500. Sample forms for requesting a disclosure packet are at the end of this chapter.²

In 1995, section 55-516.2 was added to the Act to empower an association to negotiate with local governments for monetary awards when the association's common

² David S. Mercer, Esq., and Lucia Anna Trigiani, Attorney at Law; Mays and Valentine, Alexandria, VA.

area is taken or damaged by eminent domain. This provision also stops individual members from contesting the association's (negotiation) actions in such matters.³ The Property Owners Association Act is available from the Virginia Real Estate Board and in the reference section of the County Public Libraries. It can also be downloaded from the Internet at <http://leg1.state.va.us/000/src.htm> (enter 55-508 in the search window, press submit or enter, and click the same section number which is displayed as a link).

Declaration of Covenants, Conditions and Restrictions: - The Declaration of Covenants, Conditions and Restrictions (CCRs) provides the legal basis for preserving the developer's approved plan for the residential and common properties in a development, and establishes the rights and obligations of the owners and their association. A declaration typically includes:

- a description of each parcel, lot or property subject to the association membership and its covenants conditions and restrictions;
- a description of the types of housing permitted;
- requirements for the property owners' association to be responsible for the maintenance and improvement of common property;
- a definition of membership requirements and obligations; provision for a governing body; and assigned voting rights of each type of association member;
- provision for the annual assessment of each lot to raise the funds to maintain the common areas, provide community services; and operate the association.
- requirement for prior association approval for all exterior changes or additions to any private lot or structure; and provisions for association enforcement; and,
- provision for members' access and use of the common grounds and facilities.

Any amendment(s) to the declaration must be officially ratified by a vote of the owners, and sometimes must obtain the actual signatures of the owners on the amendment document or on a ratification form. Any amendment must be consistent with the higher standing state law and current zoning requirements. Whether recorded or not, the bylaws are inferior to the declaration and do not have to be amended. However, if an amendment to the declaration creates a conflict with the bylaws, it is better practice to amend both for consistency. Any amendment to a recorded document, no matter how small or insignificant, must also be recorded in the County land records in order to supercede the former record and to become legally enforceable.

³ Chapter 377 of the 1995 Acts of the Virginia General Assembly.

Association Bylaws - The bylaws of a property owners' association are administrative rules, guidelines and requirements that are based upon and support the declaration and the Articles of Incorporation. The bylaws detail the authority and responsibility of the board, and may be recorded in the County Land Records but the law does not require recording. Typically, association bylaws allow for:

- requirements for the annual membership meeting, for special meetings, and the notices required prior to these meetings;
- rules for the conduct of meetings, i.e., the agenda, the order of business, quorum requirements, vote requirements for passage of different types of business items, etc;
- the number of directors, the length of their terms of office, methods of election and recall; and notice for and number of board meetings;
- the association's officers, their powers and duties, and the method and frequency of their election;
- committees that may be established to advise and assist in the management of the association;
- the method for amending the bylaws and other governing documents;
- bonding and insurance requirements;
- enforcement of the declaration, bylaws, rules and regulations;
- maintenance of association properties;
- establishment of sound financial procedures, financial reports and the budget; maintenance of the books and records, assessment levels, and collection of assessments;
- purchase of required hazard and liability insurance;
- employment of staff, and definition of their duties;
- appointment of committee members and supervision of their duties.

The bylaws often specify members' rights, including the right to vote in person or by proxy, the right to inspect the association books and records, the right to receive proper notice of meetings and assessment levels. The bylaws may also reiterate the members' responsibilities to pay both the annual and any special assessment, to follow restrictions outlined in the declaration and bylaws, and to abide by the rules and regulations established by the board of directors.

County Zoning Regulation - Under Sections 2-701 through 2-705 of the County's Zoning Ordinance, developers are required to establish a property owners' association and to record covenants and restrictions that "run with the land" and lots. These documents obligate the association to be responsible for the operation, perpetuation and maintenance of all common lands, uses and facilities in the development, including recreation facilities, private roads, parking areas, private stormwater management facilities, etc. Private attorneys representing the developer normally prepare these documents which vary widely in content and style. They must be submitted to the Office of the County Attorney for review and approval of their form and content prior to recordation in the County's land records. The County Attorney's review includes:

- the association's Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation, and the Bylaws related to the use of common property, including the system and amounts of assessments for perpetuation and maintenance of the common property;
- a document granting the right of entry onto common property to County law enforcement, fire and rescue personnel, and permitting enforcement of emergency vehicle access for private streets and driveways;
- a complete listing of all buildings, equipment, facilities, land parcels and other holdings of the association and a complete description of each;
- a copy of the proposed notice to be given to buyers regarding the association, its assessments, and its fiscal program;
- a copy of the Deed of Conveyance and Title Certificate, or a commitment for a policy of title insurance assuring unencumbered title for all lands proposed to be conveyed to the County, other government agencies, and the association.

The developer must obtain county approval before the final site plan is approved or recorded. Once approved, these documents become part of the recorded subdivision site plan, to run with the land in full force and effect of law for not less than 20 years, and to be automatically renewed each 20 years unless terminated by the association as allowed by law. The County also requires that common open space not be "denuded, defaced or otherwise disturbed without County approval". This allows routine maintenance, mowing and edging; removal of dead, infected or hazardous trees and noxious vegetation; and replacement of dead landscaping. This ensures that privately owned, essential community facilities will be maintained when not publicly owned by the state or county. A copy of the "Common Open Space and Common Improvement Regulations" Ordinance is available online at http://www.fairfaxcounty.gov/ocp/zoning_ordinance.htm (click on Article 2 General Regulations, scroll down to Sections 2-309 "Open Space", and 2-700 "Common Open Space and Common Improvement Regulations"), and in all County libraries.

Condominium Associations:

Condominium (projects) are multiple-unit structures in which each unit is privately owned, but some parts of the structure (i.e., roof, lobby, hallways, and utility systems) or the grounds (i.e., drives and parking, pool, landscaping, and street lights) are owned and shared by all of the unit owners. Condominiums may be multi-storied high-rise buildings, town houses, garden apartment style, or other structural forms; and may be limited to residential or commercial use only, or occasionally may include a mix of residential units (above) and commercial (on the ground floor) uses. The developer may increase or decrease the overall condominium size by adding or selling adjacent land; and existing apartments, commercial or other rental structures can be converted to condominium ownership. Additionally, the developer can establish different types of condominiums to meet his long-range development plans prior to sale of the first unit. Some different types of condominiums are:

- **Contractible Condominium:** means a condominium from which one or more parts of the land may be withdrawn, sold or otherwise used by the developer in accordance with the declaration.
- **Conversion Condominium:** means a condominium created by changing the form of ownership of an existing building or structure (e.g., a rental apartment complex that is converted to a condominium through sale of the units to individual owner(s).
- **Expandable Condominium:** means a condominium to which adjacent land may be added for more living units, recreation facilities, open space, or other permitted development in accordance with the provisions of the declaration and applicable law.
- **Leasehold Condominium:** means a condominium in all or any portion of which each unit owner owns an estate for (limited) years in his unit, or in the land upon which that unit is situated, or both, with all such lease-hold interest(s) due to expire at the same time.

It is important for prospective purchasers, owners and association directors to understand that the developer may have retained rights with respect to some of the improvements or amenities of the condominium. Often the declarant will retain rights to add or withdraw property to or from the condominium project. Purchasers should also know what control of the association the declarant plans to retain and for how long. Similarly, purchasers should know what insurance provisions apply, about any restrictions on the sale or lease of the unit they are buying, and other important details about the ownership and governance of the condominium.

Public Offering Statement – Because of this multiplicity of development conditions and possibilities, the Condominium Act requires a Public Offering Statement to be approved by the Virginia Real Estate Board. This statement must “fully and accurately disclose the characteristics of the condominium, and the units therein offered, and shall make known to prospective purchasers all unusual and material circumstances or features affecting the condominium.” The declaration must also be approved and recorded by the time the first

unit is offered for sale. Although not required disclosure documents, the approved Proffers and Conceptual/Final Development Plan are development documents that are available to the public and show all planned and proposed aspects of the condominium in detail. All of these public documents are available for review and scrutiny by any prospective purchaser. Nevertheless, whole associations can and have missed important details that affect the final development of their community. It is important that every prospective unit owner knows and understands all provisions, conditions, and rights described and defined in these documents. Then, if and when the developer exercises his right to add or sell a portion of, or otherwise modify the existing condominium, owners should not be surprised.

Virginia Condominium Laws - The Horizontal Property Act and the Virginia Condominium Act jointly govern condominiums established prior to July 1, 1974. In cases of conflict between the two Acts, the Condominium Act prevails, but it cannot invalidate any provision of the governing documents that were recorded under the Horizontal Property Act. The Condominium Act alone applies to condominium projects established after July 1, 1974. According to a former Virginia Attorney General's opinion, a condominium established under the Horizontal Property Act is governed by the condominium instruments and the first three articles of the Virginia Condominium Act that are not in conflict with the condominium instruments. The Condominium Act is available from the Virginia Real Estate Board (tel. (804) 367-8510), the County Public Libraries, and can be downloaded from the Internet at <http://leg1.state.va.us/000/src.htm> (enter 55-79.39 in the search window and press submit). Information about the Virginia Real Estate Board can be found on the Internet at <http://www.state.va.us/dpor> under Boards and Regulations.

General Requirements of Virginia's Condominium Act - It is important for anyone involved in the governance of a condominium association to understand and be familiar with the Virginia Condominium Act. This statute imposes specific limitations, restrictions, responsibilities and obligations that may not be included in the recorded documents. Among the more important provisions of the Condominium Act are the following:

- if provisions of the governing documents are in conflict, the declaration prevails first; specific provisions will prevail over general provisions; and, provisions consistent with the statute will prevail over provisions that are inconsistent with the statute;
- all board meetings shall be open to unit owners, and minutes shall be kept and be available to unit owners. Closed executive sessions of the board are permitted only in very limited circumstances;
- after the association is formed, a general meeting of all unit owners shall be held at least once per year to elect directors and conduct other association business. Notice of the meeting, including the time, date, place, and purpose must be hand delivered or mailed to each unit owner at least 21 days prior to the meeting;

⁴ Letter to the Honorable J. Warren White, Jr., dated February 28, 1977, reprinted in 1996-97 Opinions of the Attorney General, pp. 40-42.

- if proxy votes are permitted, the proxy must be signed, dated and witnessed in writing. The proxy must include a brief explanation of the effect of leaving the proxy uninstructed; all proxies automatically become invalid upon adjournment of the first meeting after the date of the proxy;
- unless the condominium instruments provide otherwise, a quorum shall be deemed present if persons entitled to cast more than 33 $\frac{1}{3}$ % of the (total) votes are present at the beginning of such meeting. The bylaws may provide for a larger or smaller percentage (but not less than 25%). Unless the condominium instruments provide otherwise, a quorum of directors shall be deemed to be present if persons entitled to cast one-half of the (total) votes in the executive organ are present at the beginning of such meeting;
- accurate, detailed books and records of the receipts and expenditures relating to the operation and administration of a condominium, including specific amounts of compensation paid to its employees, must be kept and must be made available to all owners on convenient work days;⁵
- when an insurance policy has been obtained by or on behalf of the unit owners' association, written notice that the insurance has been obtained, changed or terminated must be promptly provided to each unit owner;
- an association must follow certain procedures when placing a lien on a unit for delinquent assessments. The time for filing a lien and for enforcing a lien are limited by this law;
- within 10 days of a written request, the owners' association must furnish to the purchaser of a resale unit a recordable statement of the amount of any unpaid assessments currently levied against that unit. Failure to do so will extinguish the lien for unpaid assessments on that unit; and
- the association must furnish a "Certificate of Resale" with association information concerning any rights of first refusal that the association has on a unit; the status of the unit's assessment account and any liens filed thereupon; and other financial statements concerning the association.

The required Certificate of Resale must include a statement that improvements or alterations to the unit or its limited common elements are not in violation of the instruments. To validate this statement, an inspection of the unit by the association is essential. The association must furnish the Certificate of Resale within 10 days of the written request and payment of a fee (may not exceed \$100) by the seller. If more than sixty days elapse between a contract date of disposition and the date of settlement, the purchaser may request an association assurance (letter) that statements previously furnished in the Certificate of Resale remain materially unchanged, or a statement specifying any material changes. This assurance statement must be provided within 10

⁵ *Grillo v. Montebello Condominium Unit Owners' Association*, 243 Va. 475, 416 S.E.2d 444 (1992).

days of the request. A request form for Certificate of Resale and a sample format of the Certificate itself are provided in Chapter 2 of this manual.⁶

Condominium Instruments - “Condominium Instruments” is a collective term for the recorded documents that establish and define a condominium, and include the Declaration or “Master Deed”, the Bylaws, the Deed of Dedication, and the plats and plans for the condominium. These documents are recorded among the County land records by the developer (“Declarant”) prior to the sale of any unit to any person or other entity. These instruments must comply with and are subservient to the Condominium Act, the Nonstock Corporation Act, and other applicable laws. Any amendment(s) to the condominium instruments must also be recorded in the County land records in order for the amendment(s) to be effective and enforceable.

Declaration or “Master Deed” - The Declaration, or “Master Deed”, is a legal description of the condominium project as a whole, including definition of the condominium units, the common elements, and assignment of any limited common elements such as parking spaces, storage areas, balconies or patios. “Master Deed” and “Declaration” are synonymous; but the former is a holdover term from the Horizontal Property Act with limited applicability since passage of the Condominium Act. The declaration establishes the type of condominium and may reserve certain rights for the developer; i.e., to provide for phased construction, allow the future sale or addition of some of the land, or permit unit use and ownership other than for residential living, etc. When a Master Deed is recorded, the units, the common elements, and the rights and liabilities of each unit; i.e., the entire condominium project, are constituted as an integral part of an established property regime even if physical construction has not started.⁷ The Virginia Condominium Act applies to every condominium established by recordation after July 1, 1974, and requires the declaration to include:

- the name (including the word “condominium”), the location, the city, and county where located;
- a legal description of the condominium property by metes and bounds;
- a description of the individual unit boundaries, inclusive of the horizontal and vertical boundaries, and a description of any limited common elements;
- a description of all common elements (not within the boundaries of any convertible lands) which may subsequently be assigned as limited common elements; and the allocation of an undivided interest in common elements and limited common elements (if applicable), to each unit;
- a statement of the extent of the developer’s obligation to complete improvements (labeled “NOT YET COMPLETED”); or to start/complete improvements (labeled “NOT YET BEGUN”) on the recorded plans. The statement shall specify the type and

⁶ David S. Mercer, Esquire, and Lucia Anna Trigiani, Attorney at Law; Mays and Valentine, Alexandria, VA, 1995.

⁷ United Masonry, Inc. v. Jefferson Mews, Inc., 218 Va. 360, 237 S.E.2d 171 (1977).

quality of materials to be used, the size or capacity of the improvements, and the time by which improvements shall be completed; and,

- other matters, rights, reservations and provisions as deemed appropriate.

If there is undeveloped “convertible land” within the condominium, or adjacent “additional land”, upon which more units will be built, or if it is a “contractible, leasehold or conversion condominium,” the declaration must also include the following or similar items (depending on the condition to be covered):

- a legal description of any convertible land parcels within the condominium, the maximum number of (future) units that may be created within each convertible land parcel, and a description of all other improvements that may be made on each parcel of convertible land within the condominium;
- the maximum percentage of the aggregate land and floor area of all units that may be created that are not restricted exclusively to residential use;
- the extent to which any structure erected on any convertible land will be compatible with other structures on the submitted land in terms of quality of construction, the principal materials to be used, and the architectural style;
- a statement that units created within each parcel of convertible land will be substantially identical to units on other portions of the land, or a statement describing in detail what types may be created; and,
- a description of the declarant’s right, if any, to create limited common elements within any convertible land, and/or to designate common elements therein which may subsequently be assigned as limited common elements, in terms of the types, sizes, and maximum number of such elements within such convertible land.

Condominium Bylaws - Condominium bylaws have the same purpose – e.g., effective governance and administration, and most of the same provisions as in a property owners’ association. The Virginia Condominium Act requires the bylaws to be recorded in the County’s official land records. In cases of conflict, the bylaws have higher standing than adopted rules and regulations or policy resolutions of the association. The bylaws define the number of directors and officers, their election and replacement procedures, and their duties and obligations in conducting the business of the association. The bylaws establish all meeting requirements, authority and procedures; the quorum, voting and petition requirements; the requirements for employing staff, contracting and/or delegating duties; and a host of other procedures and operational requirements. Effectively, the bylaws are the association’s operational and procedural manual.

Over time, it may become desirable or necessary to amend the original or existing bylaws to address new or changed situations and conditions in the association. It is important to understand that the bylaws (and other governing documents) may not be changed or modified exclusively by the board of directors. The signatures of a “super

majority” of unit owners representing not less than $66\frac{2}{3}$ of association votes, must ratify the amendment document(s). The law states, in part:

“If any of the units in the condominium is restricted exclusively to residential use and there is any unit owner other than the declarant, the condominium instruments shall be amended only by agreement of unit owners of units to which two-thirds of the votes in the unit owners’ association appertain, or such larger majority as the condominium instruments may specify...” (underline added for emphasis).

In other words, while the directors have the authority to adopt rules and regulations by resolution, they do not have the authority to amend the declaration or bylaws by their own (exclusive) action. The directors’ authority to adopt resolutions is granted by the declaration and cannot supercede a requirement of the higher priority state law. It is important to remember that an amendment of the bylaws must be prepared, published/noticed to all members, discussed and ratified under the current (pre-change) bylaws. If approved by affirmative vote and signatures, the amendment(s) must be recorded in the land records before it becomes effective and enforceable. Directors clearly have authority to adopt and or delete rules and regulations to govern routine daily life in the association, however, these resolutions, rules and regulations belong in a separate record or file of policy resolutions or other document of the directors’ actions and decisions – and not in the bylaws.

Condominium Unit Owners’ Association - The Condominium Act and the governing documents require the formation of a Unit Owners’ Association (sometimes “Council of Co-Owners”). Association membership is mandatory and automatic upon purchase of a unit. The Act specifically requires the declarant to write and record the initial bylaws which provide for the self-governance of the association, and for the formation of a board of directors or “Executive organ,” first by developer appointees and eventually by the election of unit owners. The association does not own any of the common elements, but it can own real estate or individual units within the condominium project. Following the transition of association control from the developer, the unit owner/members should determine whether the Articles of Incorporation need to be amended to fully attend to the interests of the owners. The association may (or may not) be incorporated via application to the State Corporation Commission; incorporation is voluntary but provides limited liability protection to the association, its directors, and members that is not provided by the Condominium Act. Unless prohibited, restricted or limited by the condominium instruments, the association has the responsibility and authority to:

- elect officer(s), if so required in the bylaws;
- employ or contract (and dismiss and replace) agents and employees for condominium management services, and to exercise and discharge the powers and responsibilities of the association;
- grant or withhold approval of any action of one or more unit owners which would change the exterior appearance of any unit or any other portion of the condominium.

The association may elect or provide an architectural control committee to grant or withhold such approval;

- provide for bonding and insurance requirements;
- acquire, hold, convey, and encumber title to real property, including individual condominium units;
- make or cause to be made, additional improvements on and as a part of the common elements of the condominium;
- have the irrevocable power as attorney-in-fact on behalf of all the unit owners and their successors in title with respect to the common elements, (i) to grant easements through the common elements and to accept easements benefiting the condominium, (ii) to assert, litigate, defend against, compromise, adjust, and settle any claims or actions related to the common elements, and (iii) to apply for any governmental approvals under state and local law.

Common Elements - In a condominium, each residential unit constitutes a separate real estate parcel that is separately assessed and taxed, and which includes an undivided ownership interest in the common grounds and facilities, which are termed “common elements.” Each unit’s ownership of the common elements is in proportion to its interest in the condominium as established in the declaration. The unit owners’ association is required by law to maintain, repair and/or replace the common elements, which common expense is paid for by the unit owners’ annual dues or assessment. The condominium act defines common elements as “... all portions of the condominium other than the (privately owned, residential) units.” This is more extensive than first meets the eye. Typically, the common elements include (but are not limited to):

- the land on which the building(s) stand; gardens, yards, recreation courts and facilities, open spaces, drives, roadways, trails, service areas, entrance gate/gatehouse, and parking areas;
- foundations, main walls, roofs, hallways, entrances and exits, lobbies and stairways, and all structural portions of the building(s); the spaces between wall surfaces or between the ceiling below and the floor above; and the entire exterior surface of the building including patios and balconies;
- basements, utility rooms and master meters (if any), lodging and/or office(s) for janitors or persons in charge of the condominium, management office, mail room, gym or exercise room, swimming pool(s);
- devices or installations existing for common use such as elevators, garbage incinerators, compartments and installations of central services and utilities, all parts of water supply, sanitary drain pipes, electric utilities, and gas distribution system that serve more than one residential unit; and,

- elements of the property (other than the privately-owned living units) that are rationally of common use or necessary to its existence, upkeep and safety.

Section 55-79.79 Upkeep of condominiums is very clear with regard to maintenance, repair and/or replacement responsibilities (and cost), yet is often misunderstood by directors and members alike. The law states:

“Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities, including financial responsibilities, with regard to maintenance, repair, renovation, restoration, and replacement of the condominium shall belong (1) to the unit owners’ association in the case of the common elements, and (2) to the individual unit owner in the case of any unit or any part thereof, ...”

Some condominiums also have “limited common elements” which are defined as “... a portion of the common elements reserved for the exclusive use of those entitled to the use of one or more, but less than all, of the units.” An example of a limited common element is an exterior balcony or patio, the use of which appertains exclusively to the residents of the immediately adjacent residential unit. Unless expressly prohibited by the condominium instruments, the rights and obligations to a limited common element may be reassigned to another unit, if at all practical. Limited common elements are defined and designated in the declaration to specific living units, any reassignment to other unit(s) also requires written agreement of the affected unit owners, an amendment of the declaration, and payment of all associated fees and costs.

Association Meetings – The Virginia Condominium Act requires associations to conduct one general membership meeting each year for the purpose of electing directors per the association’s bylaws, and for conducting other business matters of the association. This is still a board of directors meeting presided over by the president or a designated officer. For the purpose of complying with the Act, the election of directors must be an agenda item and the voting must include all members present in person or by proxy. However, unless required otherwise in the governing documents, no other association business conducted at this annual meeting requires voting by the full membership.

The Act also provides that special meetings of the full membership may be held as necessary. All unit owners of record must be notified by mail of the date, location, and purpose of the annual meeting not less than 21 days in advance of the meeting; and for special meetings, not less than 7-days in advance, by written notice to all unit owners. The bylaws may require greater advanced notice than stipulated in the Acts. Neither of the state Acts requires regularly scheduled meetings of the board of directors – normally, the bylaws require board meetings and set their frequency. However, all meetings of the association (board of directors, committees, etc.) must be open to all members who are in good standing (no delinquent assessment or violation payments). (Refer to Chapter 2 for more detailed discussion of board of directors and annual membership meetings). In 2001, both laws were amended to include the following:

- *“The executive organ shall not use work sessions or other informal gatherings of the executive organ to circumvent the open meeting requirements of this section.” and,*
- *“Notice of the time, date and place of each meeting of the board of directors/ executive organ shall be published where it is reasonably calculated to be available to a majority of the unit owners, and shall be sent by first-class mail or e-mail to any unit owner requesting such notice. A lot/unit owner may make a request to be notified on a continual basis of any such meetings, which request shall be made at least once a year in writing and include the member’s/unit owner’s name, address and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided members of the association’s board of directors conducting the meeting” (underlines added for attention).*

Along with the above amendment, each law also requires that at least one copy of the meeting agenda and materials provided to the directors also be made available for inspection by the membership (the amendment is silent with regard to copying the meeting material). Further, the laws provide that “Any member may make an audio recording of any portion of a meeting required to be open” (this excludes executive sessions). The amendments also provide that if a meeting is conducted by telephone/ video conference or other electronic means, at least two members of the board must be physically present at the meeting place included in the (public meeting) notice. The audio/electronic equipment used at such meeting shall be sufficient for any public member in attendance to hear (by remote) what is said by all directors attending the meeting, electronically or by physical presence. Lastly, voting by secret ballot in an open meeting (except for the election of board officers) shall be a violation of the laws.

These amendments effectively force publication of all meeting schedules and thereby make all association meetings more accessible to the membership. The intent of the General Assembly is to mandate the openness of all meetings and prevent the evasive tactics used in the past by some boards. Although members’ comments and concerns can be intrusive and even disruptive of meetings, the directors must remember that their elected position does not supercede, minimize or negate the validity of the members concerns. Experience has shown that associations having the fewest internal conflicts are those that routinely publish their meeting schedules, promote attendance, and openly seek membership input and opinion; they strive to avoid even the appearance of clandestine and evasive decisions or meetings.

Incorporation

Incorporation is a very common business practice that assures a property owners’ association of the powers, duties, privileges and obligations of a nonstock corporation. Most importantly, incorporation provides liability protection to the directors and individual members against claims and court judgments against the association. No law mandates incorporation,

however, a property owners' or condominium association declaration might require incorporation. Such choice is entirely voluntary, first by the developer, and then by the owner/directors after transition of the association control. In Virginia, non-profit property owners' and condominium associations are incorporated under provisions of the Virginia Nonstock Corporation Act (Title 13.1, Chapter 10, Section 13.1-801 et. seq. of the Code of Virginia, Ann.) which is regulated and enforced by the State Corporation Commission (SCC) (tel. 1-804-371-9733).

The Articles of Incorporation generally include the following information, requirements and powers:

- the name of the corporation and a statement of purpose for which the corporation is organized;
- the authority to make contracts, borrow money, and incur liabilities;
- the powers of the association, including the right to have and exercise all powers, rights, and privileges which a nonstock corporation may exercise, to make/alter the bylaws for the administration and regulation of the corporation, and to exercise all powers necessary or convenient to affect any of the purposes for which the corporation is organized;
- the manner in which the directors of the corporation are elected or appointed; to elect or appoint officers and agents and to define their duties; to designate ex-officio directors; and list the phone number, names and addresses of the initial board of directors;
- a description of the votes needed to amend the Articles of Incorporation and the method and vote necessary to dissolve the corporation;
- provision(s) designating the class of members, stating the qualifications and rights of the members of each class, and conferring, limiting, or denying the right to vote, or providing that such membership provisions will be set forth in the corporation's bylaws;
- the address of the corporation's registered office and the name and business address of the registered agent.

Virginia's Nonstock Corporation Act gives a corporation considerable discretion to establish the details of its administrative structure and the business procedures it will use. The Act permits association bylaws to provide for the regulation and management of the association, which are not inconsistent with the statute or the Articles of Incorporation. While many provisions of the Virginia Nonstock Corporation Act deal with requirements for establishing a corporation and formulating its Articles of Incorporation, the statute should be carefully compared with an association's declaration and bylaws to determine where the association's documents are silent and, therefore, provisions of the statute apply. Whenever a change in the Articles of Incorporation is contemplated, the statute should be reviewed to make certain the change is permissible. Any amendments to the Articles of Incorporation must be filed with the

SCC. This allows each association to adopt the most effective system for its circumstances while still protecting the interests and rights of corporation members, allowing that:

- one individual may hold two or more offices;
- more than 2/3 of the votes cast at a meeting (at which a quorum exists) are necessary to amend the Articles of Incorporation. Notice of a meeting to act on a proposed amendment must be given to each member entitled to vote not less than 25 days nor more than 60 days before the meeting; and
- a minimum notice of ten days and maximum notice of 60 days for regular and special membership meetings.

If the Articles of Incorporation and bylaws do not specify otherwise, the statute will determine the number of members necessary to conduct business at a membership meeting as 1/10 of the entitled votes represented in person or by proxy. Unless specified otherwise, the statute also determines the term of a member of the board of directors as 1 year; the number of the board of directors necessary to form a quorum; procedures to fill a vacancy, or remove a member of the board of directors. The statute also requires a corporation to:

- keep certain specified corporate records;
- keep the minutes of the members meetings, the board of directors meetings, and committees which have been delegated authority by the board of directors;
- maintain appropriate accounting records, and provide access to specified corporate records to any member or his/her agent or attorney for inspection and copying, for any proper purpose, at any reasonable time, after at least five (5) business days' written notice;
- list the names and addresses of its members who are entitled to vote, and make it available during usual business hours for ten days prior to each meeting; and
- submit an annual report and registration fee to the State Corporation Commission (SCC) in Richmond, VA between January 1 and April 1 each year giving the name and other pertinent information of the nonstock corporation. Failure to file an annual report or pay the annual registration fee before September 1 of each year subjects a corporation to automatic termination. A corporation may be reinstated by making such application and submitting all past due fees and a current annual report to the SCC within five years of the termination.

An association's registered agent is the official public contact for the corporation and ensures that official correspondence will reach the association and be properly served. The agent must be a citizen of Virginia and an officer or director of the corporation, a member of the Virginia State Bar, a professional corporation of licensed attorneys, or a professional limited liability company. The address of the corporation office must also be the business address of the registered agent. Many associations employ an attorney for a yearly fee to be its registered agent

and use his/her business address as the registered corporation office. If an association retains an attorney on a regular basis, he/she often functions as its registered agent. A copy of the Nonstock Corporation Act and a guide for preparation of Articles of Incorporation are available from the Clerk of the Commission, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23209-1197. The Nonstock Corporation Act is available in the reference section at most County Public Libraries, and online at:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC> (select Title 13.1, then Chapter 10).

Request for Property Owner's Association Disclosure Packet

Property Owner's Association
(Address)

Lot Owner: _____ Date of Request _____

Lot Address: _____

Home Phone: _____ Office Phone: _____

Mailing Address: _____

Delivery Address: _____
(if different)

In order to facilitate the sale of my lot and pursuant to the provisions of the Virginia Property Owners' Association Act ("Act"), I hereby request that the Association provide the Association Disclosure Packet for the lot identified above.

I understand that the Association Disclosure Packet must be provided to me within fourteen days of receipt of this request, and that payment in full for the preparation of the Association Disclosure Packet must accompany this request. Enclosed is a check payable to the association in the amount of \$ _____ [not to exceed \$100.00, reflecting the actual cost of preparing the Association Disclosure Packet].

I hereby certify that any improvements or alterations made to the lot are not in violation of the Association documents including the Declaration of covenants, Conditions and Restrictions, the Bylaws, and the architectural guidelines of the association.

I hereby designate _____ as my authorized agent to receive this Association Disclosure Packet on my behalf pursuant to Section 55-512A of the Act.

Owner

Note: Payment in full must accompany this request and be mailed to the association address shown above.

VIRGINIA RESIDENTIAL PROPERTY DISCLOSURE ACT

§ 55-518. Exemptions. – A. The following are specifically excluded from the provisions of this chapter:

1. Transfers pursuant to court order including, but not limited to, transfers ordered by a court in administration of an estate, transfers pursuant to a writ of execution, transfers by foreclosure sale, transfers by a trustee in bankruptcy, transfers by eminent domain, and transfers resulting from a decree for specific performance.
2. Transfers to a beneficiary of a deed of trust by a trustor or successor in interest who is in default; transfers by a trustee under a deed of trust pursuant to a foreclosure sale, or transfers by a beneficiary under a deed of trust who has acquired the real property at a sale conducted pursuant to a foreclosure sale under a deed of trust or has acquired the real property by a deed in lieu of foreclosure.
3. Transfers by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.
4. Transfers from one or more co-owners solely to one or more other co-owners.
5. Transfers made solely to any combination of a spouse or a person or persons in the lineal line of consanguinity of one or more of the transferors.
6. Transfers between spouses resulting from a decree of divorce or a property settlement stipulation pursuant to the provisions of Title 20.
7. Transfers made by virtue of the record owner's failure to pay any federal, state, or local taxes.
8. Transfers to or from any governmental entity or public or quasi-public housing authority or agency.
9. Transfers involving the first sale of a dwelling.

B. Notwithstanding the provisions of subdivision 9 of this section, the builder of a new dwelling shall disclose in writing to the purchaser thereof all known material defects which would constitute a violation of any applicable building code. The disclosure required by this subsection shall be made by a builder (i) when selling a completed dwelling, before acceptance of the purchase contract or (ii) when selling a dwelling before or during its construction, after issuance of a certificate of occupancy. Such disclosure shall not abrogate any warranty or any other contractual obligations the builder may have to the purchaser. The disclosure required by this subsection may be made on the disclosure form described in § 55-519. The builder may not satisfy the requirements of this subsection by the use of the disclaimer statement described in § 55-519. If no defects are known by the builder to exist, no written disclosure is required by this subsection. (1992, c. 717; 1993, c. 824; 1994, cc. 80, 242.)

Property Owners' Association
Association Disclosure Packet
[Virginia only]

To: _____

From: _____
Property Owners Association

Re: Lot Address _____

Date: _____

Pursuant to Section 55-512 of the Virginia Property Owners Association Act, as amended, we hereby certify that as of the date hereof, except as herein stated:

A. The status of assessments and mandatory fees or charges with respect to the lot is as follows:

Current assessment due	_____	\$ _____
Assessments in arrears	_____	\$ _____
Other fees or charges due	_____	\$ _____
Fees or charges in arrears	_____	\$ _____
Total Due		\$ _____
Assessments, fees and charges for the current fiscal year not yet due		\$ _____

The association levies annual assessments, payable in equal monthly installments, to pay common expenses. Special assessments may also be levied for the same purpose. Charges for use of certain common area facilities include _____.

A fee of \$ _____ is currently charged by the association for the preparation of the Association Disclosure Packet. A late charge of \$ _____ is currently applied to any assessment or installment thereof not paid within _____ days after the date it becomes due. There are no other fees or charges imposed by the association except the following:

[Fill in if applicable]

B. The association is (is not) a nonstock corporation organized under the Virginia Nonstock Corporation Act. The name and address of the registered agent for the association is:

[Fill in name and address of the registered agent]

C. The following, if any, is a list of all capital expenditures anticipated by the Association within the current or succeeding two fiscal years:

[Fill in if applicable]

D. As of the date of this certificate, there is an outstanding balance in the reserve for replacement fund (reserve account) of approximately \$_____. Of this balance, the following amounts, if any, have been designated by the Board of Directors for the following specific projects:

[Fill in if applicable]

E. Attached to this certificate is a copy of the statement of financial condition of the income and expense statement, (if any), and the current operating budget of the association for the year ended _____, 20____, the most recent fiscal year for which such statement is available.

F. There are no unsatisfied judgments against the association, nor any pending suits in which the association is a party which either could or would have a material impact on the association or its members or which relates to the lot being purchased, except as follows:

[Fill in status and nature if applicable]

G. The association holds hazard, property damage, and liability insurance policies covering the common area. [The association also maintains a fidelity bond in the amount of \$_____.]

H. The association has not given notice to the owner of the lot and has no knowledge of whether improvements or alterations made to the lot or uses made of the lot or the common area assigned to the lot, if any, are in violation of the association documents, except as follows:

[Fill in if applicable]

I. There are [are not] restrictions, limitations or prohibitions on the right of a lot owner to place a sign on the owner's lot advertising it for sale. Such restrictions (if any) are set forth in Section _____ of the Declaration [Bylaws, Rules and Regulations, Resolutions, and/or Architectural Guidelines] attached hereto as Exhibit _____ to this Disclosure Packet.

J. Attached to this certificate is a copy of the Declaration, Articles of Incorporation, Bylaws, Rules and Regulations, and Architectural Guidelines of the association, including all amendments.

The information contained in this Association Disclosure Packet, issued pursuant to section 55-512 of the Virginia Property Owners' Association Act, as amended, based on the best knowledge and belief of the association, is current as of the date hereof.

The Association contact for questions regarding this disclosure packet is:

(Name)

(Address)
_____, _____
(City) (State) (Zip)

I hereby acknowledge that I received this Association Disclosure Packet on _____, 20__.

(Unit Owner)

(Unit Owner)

I hereby acknowledge that I have received and read the information contained in this Association Disclosure Packet on _____, 20__.

(Purchaser)

(Purchaser)

Request for Certificate of Resale

_____ Condominium
Unit Owners Association

(Address)

Unit Owner: _____ Date of Request _____

Lot Address: _____ Unit # _____

Home Phone: _____ Office Phone: _____

Mailing Address: _____

Delivery Address: _____
(if different)

In order to facilitate the sale of my unit and pursuant to the provisions of the Virginia Condominium Act ("Act"), I hereby request that the Unit Owners Association provide the Certificate of Resale for the unit identified above.

I understand that the Certificate of Resale must be provided to me within ten days of receipt of this request, and that payment in full for the preparation of the Certificate of Resale must accompany this request. Enclosed is a check payable to the association in the amount of \$_____ [not to exceed \$100.00, reflecting the actual cost of preparing the Certificate of Resale].

I hereby certify that any improvements or alterations made to the unit are not in violation of the Condominium instruments including the Declaration, Bylaws, and Resolutions adopted by the Board of Directors of the _____ Condominium Unit Owners Association.

I hereby designate _____ as my authorized agent to receive this Certificate of Resale on my behalf pursuant to Section 55-79.97 of the Act.

Unit Owner/s

Note: Payment in full must accompany this request
and be mailed to the association address shown above.

_____ Condominium
Certificate For Resale
[Virginia only]

To: _____

From: _____ Condominium
(Unit Owners Association)

Re: Condominium Unit No. _____, and limited common element parking space # _____

Pursuant to Section 55-79.97 of the Virginia Condominium Act, as amended, we hereby certify that as of the date hereof, except as herein stated:

A The status of assessments with respect to the identified unit is as follows:

Current assessment due	_____	\$ _____
Assessments in arrears	_____	\$ _____
Other fees or charges due	_____	\$ _____
Fees or charges in arrears	_____	\$ _____
Total Due		\$ _____
Assessments, fees and charges for the current fiscal year not yet due		\$ _____

The association levies annual assessments, payable in equal monthly installments, to pay common expenses. Special assessments may also be levied for the same purpose. A fee of up to \$ _____ is currently charged by the association for the preparation of a Certificate of Resale (such as this one). A late charge of \$ _____ is currently applied to any assessment or installment thereof not paid within _____ days after the date it becomes due. There are no other fees or charges imposed by the association except the following:

[Fill in if applicable]

B. The condominium instruments do not create any rights of first refusal or other restraints on free alienability of any of the condominium units.

The condominium instruments create a right of first refusal for the benefit of the association on the sale of any of the condominium units. The right has been waived in the case of the sale of this unit from _____ to _____, provided that such sale takes place in accordance with the terms of the contract of sale between them dated _____, 20 __, and that no modification of the contract occurs without the consent of the association.

C. The following, if any, is a list of all capital expenditures anticipated by the Unit Owners Association within the current or succeeding two fiscal years:

[Fill in if applicable]

D. As of the date of this certificate, there is an outstanding balance in the reserve for replacement fund (reserve account) of approximately \$ _____. Of this balance, the following amounts, if any, have been designated by the Board of Directors for the following specific projects:

[Fill in if applicable]

E. Attached to this certificate is a copy of the statement of financial condition (balance sheet), an income and expense statement, (if any), and the current operating budget of the Unit Owners Association for the year ended _____, 20 __, the most recent fiscal year for which such statement is available.

F. There are no unsatisfied judgments against the Unit Owners Association, nor any pending suits in which the Unit Owners Association is a party except as follows:

[Fill in status and nature if applicable]

G. The Unit Owners Association holds hazard, property damage, and liability insurance policies covering the common elements and the units as required by the Bylaws. It is suggested that each unit owner obtain insurance covering property damage to betterments and improvements installed in the unit and personal property contained therein (not covered by the Unit Owners Association policy) as well as insurance covering personal liability. You are urged to consult with your insurance agent.

H. The Unit Owners Association has no knowledge of whether improvements or alterations made to the condominium unit or the limited common elements assigned thereto are in violation of the condominium instruments except as follows:

[Fill in if applicable]

I. There is no leasehold estate affecting the condominium.

J. Attached to this certificate is a copy of the Declaration, Bylaws, and Rules and Regulations of the condominium, including all amendments.

K. The condominium [a portion of the condominium] is [is not] located within a development subject to the Virginia Property Owners' Association Act (§55-508 et seq. of Chapter 26 of Title 55 of the Code of Virginia).

The information contained in this Certificate for Resale, issued pursuant to section 55-79.97, 55-79.84(H), and 55-79.85 of the Condominium Act, as amended, based on the best knowledge and belief of the Unit Owners Association, is current as of the date hereof.

The name and address of the President of the Unit Owners Association is:

<hr/>		
(Name)		
<hr/>		
(Address)		(Unit)
<hr/>		
(City)	(State)	(Zip)

The Unit Owners Association may charge a fee for the actual cost of preparation of this Certificate for Resale as allowed by law.

Dated: _____

Unit Owners Association

By _____
(Name) (Office)

I hereby acknowledge that I received this Certificate For Resale on _____, 20__.

(Unit Owner)

(Unit Owner)

I hereby acknowledge that I have received and read the information contained in this
Certificate For Resale on _____, 20__.

(Purchaser)

(Purchaser)